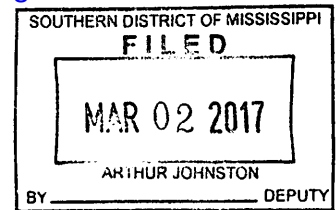


IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION



NICHOLAS D. BROWN, # 197000

PETITIONER

VERSUS

CIVIL ACTION NO. 3:17cv49-TSL-JCG

SUPERINTENDENT LEE and ATTORNEY
GENERAL OF THE STATE OF
MISSISSIPPI

RESPONDENTS

MEMORANDUM OPINION AND ORDER OF DISMISSAL

This matter is before the court sua sponte. Pro se petitioner Nicholas D. Brown filed this Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 [1]. He is incarcerated with the Mississippi Department of Corrections, and he challenges his convictions for possession of cocaine and codeine. The court has considered and liberally construed the pleadings. As set forth below, this case is dismissed.

On January 23, 2017, Brown filed the instant habeas Petition, challenging his convictions received from the Simpson County Circuit Court on March 13, 2014. He claims that his guilty pleas were not knowing or voluntary; that he received ineffective assistance of counsel because his lawyer would not file a certain motion, call witnesses, or properly investigate Brown's case; that he did not reside nor was present at the home where the search warrant was executed; and that he was not present at a hearing.

This is not the first time Brown has filed a habeas action

on these drug convictions. On September 8, 2016, he filed the same habeas claims. The prior action is styled Brown v. Lee, No. 3:16cv697-CWR-RHW ("Brown I") and is still pending before the court.

A civil action, including a habeas action, may be dismissed if it is duplicative of another action pending in the same court. Oliney v. Gardner, 771 F.2d 856, 859 (5th Cir. 1985). See also, Norwood v. United States, 235 F. App'x 231, 231 (5th Cir. July 24, 2007) (habeas) (citing Pittman v. Moore, 980 F.2d 994, 994-95 (5th Cir. 1993)); Williams v. Thaler, No. 3-12-cv-2667-M-BD, 2012 U.S. Dist. LEXIS 135780 at *1-2 (N.D. Tex. Aug. 30, 2012) (habeas). Because the instant Petition raises the same grounds and is based on the same facts as the prior pending case of Brown I, the instant case is duplicative. It is therefore dismissed without prejudice.

IT IS THEREFORE ORDERED AND ADJUDGED that, for the reasons stated above, this cause should be and is hereby **DISMISSED WITHOUT PREJUDICE**. A separate final judgment shall issue pursuant to Federal Rule of Civil Procedure 58.

SO ORDERED, this the 2nd day of March, 2017.


UNITED STATES DISTRICT JUDGE